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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,242	08/17/2000	Tomas Andrysek	UD&LP049	7359

7590 06/13/2006  
IVAX Corporation  
Legal Department  
4400 Biscayne Blvd.  
Miami, FL 33137

EXAMINER

LUKTON, DAVID

ART UNIT PAPER NUMBER

1654

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/642,242

EXAMINER
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ART UNIT	PAPER NUMBER
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2006/0601

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Please see the following communication regarding the response  
filed 7/29/03 and 8/6/03.

At the time of the Office action mailed 1/29/03, claims 1-34 were pending, claims 2, 25, 27, 29, 31, 33, 34 were under examination, and claims 1, 3-24, 26, 28, 30, 32 were withdrawn from consideration.

The response filed 7/29/03 directed the amendment of claims 2, 25, 27, 29, 33, 34, the cancellation of claim 31, and the addition of claims 35-52. At that point, claims 1-30 and 32-52 were pending. The response filed 7/29/03 also directed various amendments to the specification. Subsequent to this amendment, an additional amendment was filed on 8/6/03. This appears to be the same as the one filed on 7/29/03. No explanation has been provided by applicants for the second rendition of the amendment. In any case, claims 1-30 and 32-52 are regarded as pending.



**A complete listing of all pending claims is required in response to this Office action.**



The amendment filed 7/29/03 (and/or 8/6/03) attempts to change the claimed subject matter from an elected composition to a non-elected composition. As such, applicants

are held to be “non-responsive”. As a reminder to applicants, the restriction that was mailed on 6/28/01 was the following:

- I. Claims 1, 6, 8, 10, 13, 15, 17, 20, 22, 24, 26, 28, drawn to a method of increasing viscosity.
- II. Claims 2, 25, 27, 29, 31, drawn to a composition that does not require the presence of alcohols.
- III. Claim 30, drawn to a composition that comprises the ingredients of the Group II, together with other specific compounds.
- IV. Claims 3, 5, 7, 9, 11, 12, 14, 16, 18, 19, 21, 23, 32, drawn to a composition that requires the presence of alcohols.

In response to the foregoing, applicants elected Group II. There was no indication that the elected claims could or did contain any alcohols. Moreover, the restriction specified that this group is drawn to formulations in which alcohols were not required (or, for that matter, even permitted). At the same time, Group IV was drawn to a formulation in which the presence of an alcohol was required. Applicants chose not to elect the group in which alcohols were present. Further, applicants, at that time, presented no evidence or reasoning as to why a “first” formulation which does not contain an alcohol is obvious over a “second” formulation which does contain an alcohol, or *vice versa*. Nor have applicants presented any such evidence or reasoning subsequent to the restriction. What applicants are essentially attempting to do by the amendment (filed

7/29/03 and/or 8/6/03) is to change the election from Group II to Group IV.

However, a change in the election is not a matter of right.

One of the following two courses of action is required in response to this Office action:

(a) amend the claims so as to include the subject matter of Group II, while at the same time, avoiding the subject matter of Group IV, or (b) file a request for continued examination, accompanied by a request to change the elected Group from Group II to Group IV.

. . . . .

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**



Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



DAVID LUKTON, PH.D.  
PRIMARY EXAMINER